

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4264 of 1981

Date of decision: 9-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAJAPATI AMTHALAL JOITARAM

Versus

COLLECTOR

Appearance:

Mr. R.V.Desai for Petitioners
Mr. Mukesh Patel for Respondent No. 1
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/01/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioners, three in number, have made prayer for setting aside the order of the Collector, Mehsana, dated 19-8-1987 and the order of the Mamlatdar, Kalol dated 24-7-1981. Under the aforesaid orders the petitioners were directed to remove their cabins from the land in dispute.

2. The land bearing survey No.440/2, situate opposite Mahendra Mills Ltd., within the municipal limits of Kalol, District Mehsana, is on the Kalol - Ahmedabad road. The whole area of both sides of the road is built upon and used for business purposes. On the land of survey No.440/2 there has been no cultivation for number of years. It is not in dispute that this land belongs to respondent No.3. Respondent No.3 had let out three pieces of land from the aforesaid land to the petitioners for business purposes. Details of the land which has been let out to the petitioner together with the amount of rent as well as the area of the land let, out are given in para 2(a), (b) and (c). All the respondents have filed reply to the special civil application. In the reply, respondent No.3 has not disputed the fact that the land has been let out to the petitioners. Respondent No.3 had filed Civil Suits No.55/77, 53/77 and 217/75 against the petitioners for possession of the suit land, out of which Civil Suit No.217/75, against petitioner No.3, has been dismissed. Other suits are said to be pending in the court.

3. Respondent No.3, the landlord, has been trying to evict the petitioners by one or the other means, as the price of the land has increased. The Collector, Mehsana, passed order No.LND/NA/Vashi dated 19th August, 1967, against respondent No.3 directing removal of the occupants of the land on the ground that the cabins are unauthorised construction. There is no dispute inter se the parties that petitioners were not parties to the order dated 19th August, 1967. In the proceedings in which the aforesaid order has been passed, the petitioners were not given any notice or opportunity of hearing. It is the case of the petitioners that there is another serious infirmity in the aforesaid order as it proceeds on an incorrect finding that the cabins are adjoining the public road and are within the margin of 15 feet required to be kept open. The petitioners' case is that their cabins are at a distance of 4.35 metres from the boundary of the road. It has further been stated by the petitioners that if the petitioners were heard in

those proceedings, they could have given proper explanation and persuaded the Collector to regularise the cabins. In para 6 of the special civil application the petitioners made averment that the landlord (respondent No.3 herein) himself has constructed two more cabins in the land of survey No.440/2, one of which has been given on rent to one Amraji Ghambhirsing Thakor who runs a cycle repairing shop therein. These two cabins which have been constructed by the landlord himself are in the line of the cabins of the petitioners. The other cabin is stated to be vacant. The petitioners were not aware of the order dated 19th August, 1967, but the Circle Inspector used to go and talk to them that the Government is going to remove their cabins. It is the case of the petitioners, that the landlord, respondent No.3 herein, knowing that he is unable to get possession of the land in question from the petitioners, has made application in the month of August, 1981 to the Collector and prayed that the order dated 19th August, 1967 should be executed and the cabins be removed.

4. The petitioners filed cite plan along with the special civil application to show that there are number of cabins on the asphalt portion of the road and those have been given on rent by the Municipality and as such discrimination is sought to be made to pick up the petitioners to be dispossessed from the site. In the petition challenge is made by the petitioners to the notice given to them by the Mamlatdar as well the order dated 19th August, 1967 made by the Collector.

5. Learned counsel for the petitioners contended that the order dated 19th August, 1967 is bad in law as it has been made in violation of the principles of natural justice. The petitioners were not given notice or opportunity of hearing though they were the real persons to be affected adversely under the said order. It has next been contended that the show cause notice which has been given by the Mamlatdar is the outcome of the aforesaid order. When the aforesaid order itself is bad and nonest, the notice suffers from the same infirmity and illegality. Carrying further this contention the counsel for the petitioners urged that the landlord is the real instrumentality in the battle, who tried to get the petitioners dispossessed from the land in dispute, and at his instance the notice impugned in this petition has been given to the petitioners. Summing up this contention the counsel for the petitioners submitted that the landlord has lost in one of the civil suits filed against petitioner No.3 and in other two suits which are pending against petitioners No.1 and 2 he

has no hope of success, and to get possession of the land he has taken the shelter of the order dated 19th August, 1967. Lastly the counsel for the petitioners contended that the respondents have not acted fairly and impartially and hostile discrimination has been made in the matter of demolishing the construction. The landlord himself has raised construction of two cabins on the land of survey No.440/2, but no action has been taken whatsoever by the respondents to demolish those cabins. Further, on both sides of the road construction has been raised and the Municipality itself has made cabins, on which different persons are carrying on business. Those cabins were not ordered to be demolished whereas the cabins of the petitioners which are at a far off distance from the boundary of the road were sought to be demolished. On the other hand the counsel for respondents No.1 and 2 has supported both the impugned order as well as the notice given to the petitioners.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Respondents No.1 and 2 have admitted in the reply affidavit that the order dated 19th August, 1967 was passed by respondent No.1 without giving notice or affording opportunity of hearing to the petitioners. This order was passed in the year 1967, but that has not been given effect to till the show cause notice was issued to the petitioners on 30th September, 1981. The explanation which is forthcoming from respondents No.1 and 2 for the aforesaid inaction and omission is not convincing. Respondent No.3 has taken the aforesaid order in revision application before the State Government, but the revision application has been dismissed on 21st March, 1968. After dismissal of the revision application for all these years no action has been taken to implement the order dated 19th August, 1967. Respondents No.1 and 2 have given out that the order was not implemented as the petitioners had agreed to vacate the shops and cabins in question. But nothing has been produced on record in support of the aforesaid defence taken by respondents No.1 and 2. The aforesaid averments made in the reply were verified by respondents No.1 and 2 from the facts gathered from the record. But nothing has been produced on record to support the aforesaid averments. In absence of any record, this plea taken by the respondents cannot be accepted.

7. I have taken the translated version of the order dated 19th August, 1967 and I am satisfied that it affects the petitioners who are in occupation of the land. Any order adversely affecting their right has to

be passed in consonance with the principles of natural justice. The petitioners are in occupation of the land in dispute. In all fairness, more so when the landlord is taking all the steps to get these persons evicted, before passing the order dated 19th August, 1967 the petitioners should have been given notice and opportunity of hearing. It is not the case where the petitioners have made encroachment of some government land or land of the municipality. Indisputably, the land belongs to respondent No.3 and the petitioners are tenants. But the ground given in the order dated 19th August, 1967 is that the land has been used for the purpose other than agriculture without conversion of land use. This court cannot be oblivious of the fact that the case of the petitioners is not at par with the case of persons who made encroachment. Moreover, in the lands in the vicinity of the land in dispute and adjacent to the road, number of cabins and other constructions have been raised, where commercial activities are carried on by different persons. Even the municipality itself has raised cabins just adjacent to the road and in front of the cabins of the petitioners, but no action has been taken by the respondents to demolish the same. From the map at annexure-A it is not in dispute that the cabins which have been raised by the Municipality are ahead of the cabins of the petitioners. The width of the road, as per annexure-A, is 24 metres, and within 24 metres those cabins have been constructed, whereas the cabins of the petitioners are at a distance of 4.35 metres from the edge of the Kalol- Ahmedabad road. In para 13 of the petition the petitioners raised specific plea of discrimination, but respondents No.1 and 2 have not controverted those pleadings. The averments made by respondents No.1 and 2 in para 15 of the reply affidavit makes very interesting reading. The averments made by the petitioners in para 13 of the petition have not been controverted. What the respondents stated is that the shops of the petitioners are situated within 15 feet from the centre of the roadline. Annexure-A was stated to be not an authoritative map, but authenticated map has not been produced by respondents No.1 and 2. Respondent No.3, in reply to para 13 of the special civil application, has admitted that the Kalol Municipality has put up cabins. The position of the cabins put up by Kalol Municipality has been given out in annexure-A and those are, as stated earlier, ahead of the petitioner's cabins, i.e. in close proximity of the roadline. Respondents No.1 and 2 have not taken action against respondent No.3 for raising cabins in the land in dispute.

8. However, I do not consider it proper to decide the matter on merit, because the petitioners have approached this court only against the show cause notice given to them. The petitioners have all the rights to give out their defence in reply to the show cause notice. In the reply they could have raised all the points which they have raised in this special civil application. The petitioners could have also prayed for regularisation of their construction of cabins on the land and that matter would have been considered by the authorities. The plea of discrimination raised by the petitioners in this special civil application be raised by them in the reply to the show cause notice. The show cause notice has been given by the Mamlatdar, and as such he may not be an officer competent to go into the validity, propriety and correctness of the the order dated 19th August, 1967 passed by the District Collector, Mehsana. In the circumstances, I consider it proper to direct the District Collector, Mehsana to decide the matter, which has been initiated by the Mamlatdar against the petitioners by giving show cause notice which is impugned in this petition, after hearing the petitioners and considering all the aspects.

9. In the result this writ petition is disposed of with the direction to the District Collector, Mehsana, to consider the case of the petitioners afresh on merits, including their request for regularisation of their construction on the land in dispute. It shall be open to the petitioners to give a detailed reply to the show cause notice given to them by the Mamlatdar. That reply may be addressed to the District Collector, Mehsana, and the petitioners may produce a copy of this order before the District Collector. The District Collector, Mehsana, shall decide the matter within a period of three months from the date of receipt of certified copy of this order and the reply of the petitioners to the show cause notice given to them by the Mamlatdar. It shall be open to the petitioners to file all documentary evidence as well as affidavits before the District Collector, Mehsana. The District Collector, Mehsana, as stated earlier, shall, after hearing the petitioners and after considering the material produced before him, pass reasoned order. However, it shall be open to the District Collector to hear respondent No.3 also, if he so desires.

The petitioners have been unnecessarily harassed by respondents in the matter. The order dated 19th August, 1967 was not implemented for years together and there appears to be some substance in the grievance of the petitioners that at the instance of the landlord the Mamlatdar has proceed to give the show cause notice. In

the circumstances I consider it to be a fit case where exemplary cost should be awarded to the petitioners. Respondent No.3 is directed to pay Rs.2,000/- (Rupees two thousand) by way of cost of this special civil application. The counsel for the petitioners have no objection in case the amount of cost is ordered to be deposited in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund. Order accordingly. Respondent No.3 is directed to deposit the sum of Rs.2,000/- in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund, within two months from the date of receipt of certified copy of this order. Office is directed to send a copy of this order to the Secretary, Bar Council of Gujarat. In case the aforesaid direction is not complied with by respondent No.3, it shall be open to the Bar Council of Gujarat to take appropriate action for implementation of the same. Rule made absolute in the aforesaid terms.

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